

# **The Invisible Hand of the American Legislative Exchange Council**

ALEC's Role in the Rising Mass Incarceration of African Americans between 1990 – 2000

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## Introduction

In January 2012, Republican Representative Rachel Burgin submitted a bill to the Florida state legislature that would slash corporate taxes. Unfortunately, she forgot to remove the mission statement of the American Legislative Exchange Council (ALEC) from the proposed legislation. The following day, an embarrassed Burgin tried to withdraw her bill, but it had already been picked up by social media.<sup>1</sup> This is one of many instances in which ALEC has been exposed as a lobby making bills for Republican state legislators.

The American Legislative Exchange Council defines itself as a nonpartisan membership association for conservative state and federal legislators who share a common belief in limited government, free markets, federalism, and individual liberty.<sup>2</sup> Although ALEC operatives define themselves as working for a non-profit organization, many scholars have argued that it is, in fact, a lobbying organization. ALEC is linked to the tobacco industry, oil companies, drug companies, and prisons. ALEC has a legislative membership for legislators and a membership for corporates, foundations and private sectors. The legislators and corporate representatives work together in so-called task forces on model bills that, in turn, are distributed among the legislative members of ALEC to push through on a state or federal level. In 2013, the Brookings Institute researched the most common subjects of ALEC's model bills. They found that most model bills are about immigration, environment, guns, prisons, and crime.<sup>3</sup> In particular, ALEC worked to expand the prison industrial complex with model legislation in the 1990s, directly benefiting its corporate members such as the Correction Corporation of America (CCA). The successful passage of these laws contributed to the problem of mass incarceration. Indeed, from

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<sup>1</sup> Nanny Scola, "Exposing ALEC: How Conservative-Backed State Laws Are All Connected," *The Atlantic*, April 14, 2012, <https://www.theatlantic.com/politics/archive/2012/04/exposing-alec-how-conservative-backed-state-laws-are-all-connected/255869/>, paragraph 14.

<sup>2</sup> "About ALEC," American Legislative Exchange Council, accessed 23 March 2021, <https://www.alec.org/about/>.

<sup>3</sup> Molly Jackman, "ALEC's Influence over Lawmaking in State Legislatures," *Brookings*, December 6, 2013, <https://www.brookings.edu/articles/alecs-influence-over-lawmaking-in-state-legislatures/>, paragraph 14.

1975 until 2009 the number of incarcerated people in the United States increased nearly fivefold from 100 per 100.000 to 497 per 100.000 residents. The expansion of prisoners has been unequal in terms of ethnicity: in 2009, 1 percent of the white male population were in prison compared to 7 percent of the black male population. Furthermore, less than 5 percent of white men born in the 1990s are likely to serve a prison sentence compared to 29 percent of black men born in the same period.<sup>4</sup>

Surprisingly, only a handful of scholars have examined the connections between the implemented laws of ALEC and the mass incarceration of the black population. However, one of the few studies on the subject notes that the efforts of ALEC to extend the prison industrial complex were especially harmful for the black population as they are a vulnerable community regarding incarceration. The authors conclude that ALEC distorts the connection between the governing and the governed by implementing public policies that are based on the interests of ALEC corporate clients, which goes against the interest of the majority of American citizens.<sup>5</sup> In the case of the prison industrial complex it went at the expense of black citizens.

This thesis builds on this body of scholarship by examining how mass incarceration and the laws implemented by ALEC are connected to each other, and if ALEC and the CCA became wealthier over the backs of the black population. This research is relevant as previous scholars have made the connection between ALEC and their influence on the government, but not much has been written on the influence of ALEC on mass incarceration and how this connects to the mass incarceration of the black population in the United States. This is a major gap in the history of mass incarceration, and, if this study reveals the part ALEC had in the mass incarceration, it should be held accountable for it.

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<sup>4</sup> Michael T. Light, and Jeffery T. Ulmer, "Explaining the Gaps in White, Black, and Hispanic Violence since 1990: Accounting for Immigration, Incarceration, and Inequality" *American Sociological Review* 81, no. 2 (2016): 294.

<sup>5</sup> Rebecca Cooper, Caroline Heldman, Alissa R. Ackerman, and Victoria A. Farrar-Meyers, "Hidden Corporate Profits in the U.S. Prison System: The Unorthodox Policy-making of the American Legislative Exchange Council," *Contemporary Justice Review: CJR* 19, no. 3 (2016): 387, 395.

The research question, therefore, is: what was the role of ALEC in the increasing mass incarceration of black citizens between 1990 and 2000 and how did it and its members profit from this? For this research I will discuss seven model bills from ALEC that were passed on state and federal level. These seven model bills are: the Truth in Sentencing Act, the Habitual Violent Offender Incarceration Act, the Minimum-Mandatory Sentencing Act, the Juvenile Habitual Offender Act, the Juvenile Automatic Waiver Act, the Private Correctional Facilities Act, and the Prison Industries Act. I will argue that corporations that were an ALEC member became wealthier at the expense of African Americans and that these laws caused an impetus in the mass incarceration of African Americans.

Methodologically, I will use the original model bills as written up by ALEC in their 1995 ALEC Sourcebook of Legislation. To compare these model bills, I accessed the state archives of Arkansas, California, Colorado, Florida, Illinois, North Carolina, and Wisconsin. To compare the bills to federal legislation, I made use of the archives of the federal government, and congressional records. Furthermore, I made use of the ProQuest Historical Newspaper database to get a better perspective on the financial status of the Corrections Corporation of America, and the general arguments around ALEC legislators in states. To supplement my primary sources, I used secondary literature of scholars specialized in mass incarceration and lobby organizations.

The first chapter of this research will be a historiography, which will mainly focus on what lobby organizations are and how ALEC fits within this definition. Furthermore, it will dive deeper in ALEC's share in mass incarceration, and why African Americans are often victims of mass incarceration. The second chapter will discuss five of the seven model bills of ALEC: the Truth in Sentencing Act, Habitual Violent Offender Incarceration Act, Minimum-Mandatory Sentencing Act, Habitual Juvenile Offender Act, and the Automatic Juvenile Waiver Act. The main purpose of this chapter is to determine if ALEC's model bills have

actually been implemented on a state and federal level by comparing it to state and federal laws. Moreover, this chapter will discuss the implications these model bills had on African Americans, and why these bills were especially harmful to them. In the third chapter, I will dive into the history of private prisons. I will argue that ALEC and the CCA financially benefited from the model bills discussed in chapter two. Furthermore, I will discuss two more Acts that resulted in a bigger financial benefit for ALEC and the CCA: the Private Correctional Facilities Act and the Prison Industries Act. These Acts will be linked to the prison industrial complex, in which I will argue that people of color are enslaved again through cheap prison labor.

In this research project some limitations should be noted. ALEC has been known to be very secretive, which made it hard to access model bills, with the exception of 1995, when numerous model bills were leaked. This secrecy means that it is not always clear which legislators belong to ALEC and which do not. Furthermore, their finances are not available as well for the 1990s. There are tax documents available on the website of ALEC, but these only date back to 2011. This problem also came up while searching for the finances of the CCA, which are not accessible online. Nonetheless, I am positive that this research has put ALEC in a more accurate perspective concerning the tough on crime laws in America, and the impact it had on African Americans.

## Historiography

This chapter will give a short historiographical overview of the American Legislative Exchange Council. It will mainly focus on what lobby organizations are in general and how ALEC fits within the term lobby organization. Furthermore, the link between ALEC and the impetus in mass incarceration will be made. Moreover, it becomes clear why African Americans are often the victim of mass incarceration, and how ALEC played a role in this according to different scholars. There are not many scholarly sources on ALEC and their influence on the mass incarceration of African Americans. Therefore, this chapter is divided up in two subsections: *ALEC* and *Mass Incarceration*.

### ALEC

Lobbyist or lobby organizations have been around for a long time in the United States. According to Anthony Nownes the estimated number of lobbying groups in Washington D.C. ranges from 10,000 to 90,000. Many more lobbyists work throughout the country on a state or local level.<sup>6</sup> However, what is the exact definition of lobbying or lobbyist? In *Lobbying and Policymaking: The Public Pursuit of Private Interests* Kenneth Godwin, Scott Ainsworth, and Erik Godwin explain the differences between lobbying, lobbyist, and public policy. They define lobbying as “any effort used to influence public policy.” Whereas lobbying is something everyone can do, the term lobbyist is reserved for nongovernment actors that make money attempting to influence public policy. Public policy can, in this instance, be defined as “a course of action (or inaction) that government chooses when dealing with a social, economic, or political problem.”<sup>7</sup>

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<sup>6</sup> Anthony J. Nownes, *Total Lobbying: What Lobbyists Want (and How They Try to Get It)* (Cambridge: Cambridge University Press, 2006), 12.

<sup>7</sup> Kenneth Godwin, Scott Ainsworth, and Erik K. Godwin, *Lobbying and Policymaking: The Public Pursuit of Private Interests* (Washington DC: SAGE Publications, 2012), 6.

The two books categorize the types of lobbyists differently. Nownes categorizes lobbyists by business firms, trade associations, professional associations, citizen groups, governmental entities, think tanks, charities, universities and colleges, coalitions, hospitals, and churches. ALEC fits best in the category think tanks, which is how it defines itself on its website. Nevertheless, ALEC would fit into the category coalitions as well, as Nownes defines coalitions as a “loose collection of corporates and individuals that cooperates to accomplish the same goals.”<sup>8</sup> Godwin, Ainsworth, and Godwin have a different style of categorization for lobbyists. They categorize lobbyists in two categories: internal lobbyists, who work for the organization they are lobbying for, and external lobbyists, who work for a lobbying firm that represents the interest of many organizations. Another way of categorizing is on lobbyist’s expertise, which is divided in substantive expertise, personal contacts, and procedural knowledge.<sup>9</sup> Within this second way of categorizing, ALEC belongs to the external lobbyists as they represent the interest of many other corporates. Furthermore, within the third way of categorizing, they belong to the personal contacts and procedural knowledge, as they have legislators as personal contacts within the government, and these legislators have knowledge of political procedures.

Everything about ALEC indicates that it is a corporate lobbying organization, but ALEC defines itself as a tax-exempt educational organization. Behind closed doors ALEC did acknowledge that it was more than that. In newsletters to members, it would say that ALEC is a “good investment” and that there is “nowhere else you can get a return that high.”<sup>10</sup> The “educational” part of ALEC are the meetings for legislators and corporates to exchange ideas. This exchanging of ideas is the exchanging of model bills. Journalist Jane Meyer, for example, identifies a Wisconsin state legislator who “loved” going to these meetings, because he

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<sup>8</sup> Nownes, 16.

<sup>9</sup> Godwin, 8.

<sup>10</sup> Jane Mayer, *Dark Money: How a Secretive Group of Billionaires Is Trying to Buy Political Control in the US* (Brunswick, Victoria: Scribe Publications, 2016), 346.



retrieved new ideas, disguised them, and would present them as his own.<sup>11</sup> This way many model bills, of which big corporates profited, were made into laws.

ALEC's business model fit broader political trends in the United States. In the last decades, U.S. politics have made a shift from the hands of political parties into the hands of the rich and wealthy part of the population. In particular, more conservative politicians are lobbied by these big corporations, as they benefit the most from a conservative government.<sup>12</sup> Gordon Lafer argues that the corporate agenda of big corporate lobbyists are often coordinated through ALEC, which shows the power ALEC has in the lobbyist world, and, therefore, in politics.<sup>13</sup> Nonetheless, if the conservative views contradict with the corporate's views the lobbyists will do what is most beneficial for the corporates.

Furthermore, ALEC's model bills are often contradicting each other per state. An example of this is an ALEC model bill arguing that minimum wage should not go up, because it would result in a higher high school drop-out rate. However, in Maine, Wisconsin, and Michigan ALEC attempted to lift the restrictions of the number of hours high school students were allowed to work during the school week, which in turn resulted in a higher drop-out rate.<sup>14</sup> Although there is not much to be found on the private prison industrial complex and ALEC, Lafer's findings show that ALEC is willing to represent the interest of the corporate client they are representing. In case of the prison industrial complex in the 1990s, this meant representing the Corrections Corporation of America.

As mentioned above, the information is scarce on the connection between mass incarceration and ALEC's model bills, but there are some scholars who shortly pinpoint it in their studies. Jane Mayer argues that ALEC was "instrumental in pushing for the kinds of

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<sup>11</sup> Ibid.

<sup>12</sup> The biggest corporate lobbyists in the United States are the Chamber of Commerce, National Association of Manufacturers, and the National Federation of Independent Businesses.

<sup>13</sup> Gordon Lafer, *The One Percent Solution: How Corporations Are Remaking America One State at a Time* (Ithaca, NY: Cornell University Press, 2017), 13.

<sup>14</sup> Ibid., 174.

draconian prison sentences that helped spawn America's mass incarceration crisis."<sup>15</sup> She goes on to argue that ALEC moved to criminal justice reform, because one of their corporate clients Koch industries, a chemical manufacturing company, presented themselves as champions of criminal justice reform.<sup>16</sup> Therefore, she provides another reason for ALEC's switch to the criminal justice reform rather than only the private prisons it represented. However, she does continue to argue that most active members of ALEC profited of the criminal justice reform.

The consequences of ALEC's model bills on criminal justice reform have been immense, especially with regards to minorities. In the article "Hidden Corporate Profits in the U.S. Prison System," the authors contend that the prison industry is inherently racialized. They make use of Michelle Alexander's argument that "black Americans are slaves of the state through disproportionate incarceration driven by racial profiling from law enforcement and racially biased sentencing in the legal system."<sup>17</sup> Cooper et al. go on to argue that the efforts of ALEC to extend the prison industrial complex had consequences for African Americans, as they were already vulnerable to incarceration.<sup>18</sup> Again, similarly to Mayer, the problem of mass incarceration in relation to the model bills made into laws by ALEC is one small paragraph in a big article.

Although many scholars connect ALEC to the prison industrial complex, there are also scholars who do not think there is enough evidence to contend that ALEC is partially responsible for mass incarceration. John Pfaff argues that the understanding of ALEC being responsible for full prisons runs into two practical problems. The first problem, according to Pfaff, is that the effectiveness of lobbying organizations is overstated. The second practical problem is that it is hard to separate the private prison lobbying from the public sector lobbying. Pfaff reinforces his argument by claiming he would confidently wager that prison populations

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<sup>15</sup> Mayer, 346.

<sup>16</sup> Ibid.

<sup>17</sup> Cooper, 386.

<sup>18</sup> Ibid.

would look the same in states with or without the lobbying.<sup>19</sup> He shines a whole different light on the facts than the other scholars have done. However, his arguments are sometimes weak, because confidently wagering is not a fact. Therefore, this source is less credible than the other sources.

At last, we can establish that ALEC is in fact a lobbying organization, and not a tax-exempt educational organization, which has a big influence on lawmaking on state and federal level. Most scholars recognize that ALEC will do what is in the best interest for the corporate clients it represents. They also contend that African Americans are the main victim of the mass incarceration spiked by ALEC's model bills. However, they only shortly pinpoint these arguments in two or three sentences, or a small paragraph. Therefore, it is important that there will be more information available about the connection between mass incarceration and ALEC's model bills, which will be provided in the following chapters.

## **Mass Incarceration**

Since the 1970s the prison population of America has skyrocketed from 300,000 in 1972 to nearly two million in 2000. There are many scholars who have different opinions on the reason as to why the number of prisoners increased, but almost none of them points to ALEC. Some scholars, like Michelle Alexander, mention the "Three Strikes and You're Out" law in Bill Clinton's Crime Bill, but they do not make the connection to ALEC. The most acknowledged reason for mass incarceration starts with the War on Drugs. Michelle Alexander argues that there is nothing that contributed more to the rise of the prison population than the War on Drugs, which mainly caused the systemic mass incarceration of people of color. In federal prisons drug offenses account for more than two-thirds of the rise in prison populations

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<sup>19</sup> John Pfaff, *Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform* (New York, NY: Perseus Books, 2017), 84.

between 1985 and 2000, whereas in state prisons drug offenses accounted for half of the rise in prison population between 1985 and 2000.<sup>20</sup>

The War on Drugs was first incited by Richard Nixon in 1970, but there already was a lot of resistance from law enforcement towards it from the beginning. Even though there was resistance from law enforcement, Ronald Reagan decided to expand the War on Drugs in his two terms and increased the funding radically. Michelle Alexander and Dominique Dubois Gilliard both discuss the problems of this resistance of the Reagan administration. Both Alexander and Gilliard agree that Reagan found a simple solution for this resistance, the government would provide police departments, and law enforcement agencies that prioritized drug-law enforcement with huge grants. In addition, Reagan promised that the agencies were allowed to keep most of the cash and assets that were obtained during a raid.<sup>21</sup> Naturally, these huge cash grants motivated the police departments to increase their drug raids, and to put more people in prison. This system, to bribe state and local law enforcement implemented by the federal government, laid a base for a higher prison population in combination with more fraud within the state and local law enforcements.

Mass incarceration expanded exponentially with the tough on crime laws, but fear played a major role in mass incarceration as well. In *Fortress America: How We Embraced Fear and Abandoned Democracy* Elaine Tyler May argues that many Americans feared crime. She continues to argue that the police developed into a more army-like unit between 1980 and 1995, but did not provide confidence to the United States' citizens. Accordingly, officials kept saying to citizens that they should protect themselves, while politicians kept on blaming each other for failing to protect the public. Despite the fact that crime rates were decreasing from the

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<sup>20</sup> Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, 10<sup>th</sup> anniversary ed. (New York, NY: The New Press, 2020), 76.

<sup>21</sup> Alexander, 92; Dominique Dubois Gilliard, *Rethinking Incarceration: Advocating for Justice That Restores* (Downers Grove, IL: InterVarsity Press, 2018), 17.

1990s on, the fear of United States' citizens continued to rise, especially for violent crimes.<sup>22</sup> Politicians were already blaming each other for failing to protect the public. Therefore, it is not remarkable that Bill Clinton wanted the public to feel safe and, thus, introduced his Crime Bill in 1994, which was an impetus for mass incarceration.

However, not every scholar agrees that the tough on crime laws and the War on Drugs are the reason for prison growth. According to John Pfaff this is all part of the "Standard Story." He contends that the Standard Story "oversimplifies or simply gets wrong the factors driving the incarceration epidemic."<sup>23</sup> Moreover, Michelle Alexanders' argument, that locking up low level drug offenders through the War on Drugs is the primary reason of mass incarceration, is countered by Pfaff. According to Pfaff, only 16 percent of state prisoners are serving time on drug charges. The Standard Story also includes the prison industrial complex, which Pfaff counters as well. He argues that private spending and private lobbying are not the real financial and political engines behind prison growth.<sup>24</sup> Therefore, he opposes the idea that ALEC would have had any influence on the rise of the prison population. He suggests that the real people behind prison growth are the public sector officials, public sector unions, and the politicians in states with prisons. However, there is one aspect of the Standard Story that he does not deny, which is the critical role of race. He mainly identifies the role of racial segregation and its impact on law enforcement.<sup>25</sup> The main cause of mass incarceration, according to Pfaff, are the public sector, politicians, and public-sector unions. Furthermore, he explains that mass incarceration is a state or local problem and not a federal one.<sup>26</sup> Pfaff's views are very refreshing, but his views are more focused on resolving the contemporary problem of mass incarceration than the history and causes of it.

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<sup>22</sup> Elaine Tyler May, *Fortress America: How We Embraced Fear and Abandoned Democracy* (New York, NY: Basic Books, 2017), 85.

<sup>23</sup> Pfaff, 5.

<sup>24</sup> *Ibid.*, 6.

<sup>25</sup> *Ibid.*, 7.

<sup>26</sup> *Ibid.*, 234.

As is shown, multiple scholars have multiple reasons for the growing mass incarceration. However, they all seem to agree on one aspect of it, which is the critical role of race in mass incarceration. That African Americans have always been treated as second class citizens is stating the obvious, but why are they, percentual speaking, the largest group in the United States' prisons? Elaine Tyler May, Michelle Alexander, and Carol Anderson argue that the reason is the role of the media and fear. Moreover, Alexander and Anderson both agree that institutional racism caused these high number in mass incarceration. May argues that in the 1960s and 1970s African Americans and women were asserting their rights as full citizens, participating in society. In these decades the media revived the "age-old trope that black men were dangerous and that women – especially white women – were vulnerable."<sup>27</sup> She substantiate this argument with examples of *Time* magazine, who made it clear that citizens should fear young black men.

Similar to May, Alexander underscores the role of the media in depicting African Americans as felons. She backs up this statement with a research by Jimmie Reeves and Richard Campbell that provides insight in how the media imagery around cocaine changed as smoking cocaine became associated with poor blacks. In the first half of the 1980s the media only covered cocaine-related stories on white recreational users. The sources came from rehabilitation clinics, and, therefore, addiction was seen as a health problem. However, after the War on Drugs grew, the idea of recovery was "supplanted by a new 'siege paradigm,' in which transgressors were poor, nonwhite users and dealers of crack cocaine."<sup>28</sup> Furthermore, the War on Drugs came at the exact same time the media was saturated with the image of the black drug criminal, which made it easier for the public to pinpoint the enemy in this war.<sup>29</sup> The

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<sup>27</sup> May, 79.

<sup>28</sup> Alexander, 132.

<sup>29</sup> Ibid.

media produced an image of us against them, us being white suburban America and them being African Americans.

In addition, Alexander provides another study done in 1995 in which participants were asked to close their eyes and envision a drug user. Of these participants ninety-five percent envisioned a black drug user, whereas the other five percent envisioned other racial groups. Alexander provides many more similar research and studies to underscore the influence of the media on people's imagery in her book.<sup>30</sup> She, at last, argues that "racial bias in the drug was inevitable, once a public consensus was constructed by political and media elites that drug crime is black and brown."<sup>31</sup> Therefore, the media has had a large influence on the imagery of the typical criminal in the United States, which made African Americans the main target for law enforcement, consciously and unconsciously.

The influence of the media on the public and their imagery criminal is a returning topic amongst scholars. In *White Rage: The Unspoken Truth of Our Racial Divide* Carol Anderson argues that news outlets, with little to no evidence, issued warnings that crack was galloping out of the inner cities into the suburbs. 76 percent of these news outlets referenced to African Americans, either directly or in code words. Some of these code words were inner city, urban, etc. According to Anderson this contemplated a clear message, "the black 'plague' was coming."<sup>32</sup> Moreover, Anderson and Alexander both blame institutional racism for making it easier to incarcerate African Americans, which is certainly affiliated with the model bills produced by ALEC. They come with numerous supreme court cases that legalized the criminal justice system. The court "approved racial profiling, tossed out evidence of racial bias in sentencing ... approved 'ridiculous' peremptory strikes to eliminate blacks from a jury ... shielded district attorneys from disclosing the role of the defendant's race played in

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<sup>30</sup> Ibid., 134.

<sup>31</sup> Ibid., 135.

<sup>32</sup> Carol Anderson, *White Rage: The Unspoken Truth of Our Racial Divide* (New York, NY: Bloomsbury USA, 2017), 131.

prosecutorial discretion ... [and] determined that Title VI of the Civil Rights Act cannot be used by private individuals to sue entities, such as prosecutors or police, in the criminal justice system on grounds of racial bias.”<sup>33</sup> All these supreme court rulings demonstrate that it was rather easy to put African Americans behind bars. Therefore, it can be stated that the media imagery of the black criminal in combination with institutional racism can be seen as the chief motives of the mass incarceration of African Americans.

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<sup>33</sup> Anderson, 133; Alexander, 78.



## Model Bills vs. Legislation

Between 1990 and 2000 ALEC crafted numerous model bills that would result in a tough on crime policy. These model bills were not only used at the state level, but also at the federal level. The bills that became law contributed to mass incarceration, with African Americans disproportionately victimized. In this chapter I will discuss five important model bills that became laws and caused an increase in the prison population: the Truth in Sentencing Act, the Habitual Violent Offender Incarceration Act, the Minimum-Mandatory Sentencing Act, the Automatic Juvenile Waiver Act, and the Optional Juvenile Waiver Act. The Truth in Sentencing Act and the Habitual Violent Offender Incarceration Act will be discussed on a state and federal level, whereas the other Acts will only be discussed on a state level. I argue that these laws illuminate how ALEC contributed to mass incarceration between 1990 and 2000. Moreover, I will argue that these laws were especially harmful for the black population in the United States.

### Truth in Sentencing

In the decades prior to the 1990s, the amount of time offenders spent in prison was often shorter than their sentence due to parole. However, with the arrival of Truth in Sentencing this changed. The law mandated that at least 85 percent of the sentenced punishment had to be fulfilled. The Truth in Sentencing law was a part of the Violent Crime Control and Law Enforcement Act of 1994, also known as the Crime Bill. The Crime Bill reserved \$7.9 billion to finance the construction of more prisons and jails, of which half was reserved for states that would implement the Truth in Sentencing law.<sup>34</sup> Notably, ALEC had made a model bill that pleaded for the exact same cause, which they called the Truth in Sentencing Act. ALEC's Truth in Sentencing Act has many similarities with state legislation in, for example, Wisconsin.

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<sup>34</sup> Emily G. Owens, "Truthiness in Punishment: The Far Reach of Truth-in-Sentencing Laws in State Courts," *Journal of Empirical Legal Studies* 8, no. 4 (2011): 239.

Furthermore, it had influence on the Crime Bill to gain more money for the construction of prisons.

ALEC's model bill proposed that prisoners fulfilled at least 85 percent of their sentence. In the case of a violent crime the model bill proposed that the convicted felon serve 100 percent of the imposed court sentence.<sup>35</sup> This model bill was printed in ALEC's *Sourcebook of American State Legislation* in 1995, whereas the Crime Bill was implemented in 1994. What accounts for the similarities? The reason is former Attorney General William P. Barr, a member of ALEC. Barr was the Attorney General during the presidency of George H.W. Bush from 1991 until 1993. During his time as Attorney General, he planted the seed of the Truth in Sentencing Act and the Habitual Violent Offender Act, also known as the "Three Strikes and You're Out" law.<sup>36</sup> In 1992 he issued the Bush administrations' *24 Recommendations to Strengthen Criminal Justice* in which he argues that "states should adopt 'truth in sentencing.' Parole should be limited so that the sentence served closely approximates the sentence assessed ...While 'good-time' accrual might be retained to modify or control institutional behavior, it should not exceed Federal standards that require 85% of the sentence to be served."<sup>37</sup>

William P. Barr was already a part of ALEC before writing this report, of which evidence can be found in the 19<sup>th</sup> annual meeting revision letter of ALEC. This letter states that Barr would come to this meeting to give a lecture. Unfortunately, it is not clear on what subject this lecture would be. However, this revision letter has been written on July 9, 1992, whereas Barr's foreword accompanying *24 Recommendations* was written on July 28, 1992.<sup>38</sup> This demonstrates that ALEC has had ties with Barr for a longer time. During these meetings ideas

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<sup>35</sup> "Truth in Sentencing Act," *ALEC Sourcebook of American State Legislation*, Washington D.C.: ALEC, 1995.

<sup>36</sup> NAACP Legal Defense and Educational Fund, *What You Should Know About the Civil Rights Record of William Barr*, New York: LDF, 2018, <https://www.judiciary.senate.gov/imo/media/doc/LDF.pdf>, 8.

<sup>37</sup> U.S. Department of Justice, *Combating Violent Crime: 24 Recommendations to Strengthen Criminal Justice*, by A.G. McBride, R Scott, S.R. Schlesinger, S.D. Dillingham, and R.B. Buckman, 137713, Washington D.C., 1992, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/combating-violent-crime-24-recommendations-strengthen-criminal>, 20.

<sup>38</sup> American Legislative Exchange Council, *American Legislative Exchange Council 19th Annual Meeting August 5-9, 1992* (Colorado Springs: ALEC, 1992), 5.

are shared with one another, which indicates that ALEC has possibly had an influence on Barr. Furthermore, Barr has been an important spokesperson for ALEC, which became clear in 1994. In 1994 Barr held a press conference for ALEC, in which ALEC released preliminary data on crime in Pennsylvania. This data came from the Report Card on Crime, which ALEC was still preparing. This report card would get a foreword from Barr as well.<sup>39</sup> When putting this all together it can be argued that ALEC has had an almost invisible part in the implementation of Truth in Sentencing in the Crime Bill, with Barr as its primary spokesperson.

During the construction of the Crime Bill in 1994, ALEC had sent numerous letters to members of Congress to strike certain passages and to increase the funding of prison construction. At an early stage of the Crime Bill debate, Title VI “authorize[d] the Attorney General to make grants to individual States and to States organized as multi-State compacts to develop, expand, modify, or improve correctional facilities and programs to ensure that prison cell space is available for the confinement of violent offenders.”<sup>40</sup> Underscoring ALEC’s influence, Rep. Bill McCollum (R-FL) argued that he had ALEC’s support on an amendment of Title VI. McCollum’s proposed amendment, which he called the “truth in sentencing amendment,” would “provide \$10 billion to the States to construct or operate prison space for violent repeat offenders,” but stipulated that a state was only eligible for this grant if it implemented Truth in Sentencing, in which offenders had to fulfill at least 85 percent of their sentence. Moreover, states had to implement the “Three Strikes” law as well. The amendment passed the House of Representatives.<sup>41</sup> ALEC’s effective lobbying efforts through McCollum

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<sup>39</sup> Judith Green, “Getting Tough on Crime: The History and Political Context of Sentencing Reform Developments Leading to the Passage of the 1994 Crime Act,” in *Sentencing and Society: International Perspectives*, ed. Neil Hutton and Cyrus Tata (London: Routledge, 2016), 59.

<sup>40</sup> *Congressional Record*, 103<sup>rd</sup> Cong., 2nd sess., 1994, Vol. 140, Issue 51, Rec. E; Congress.gov, “H.R.3355 - 103rd Congress (1993-1994): Violent Crime Control and Law Enforcement Act of 1994,” September 13, 1994, <https://www.congress.gov/bill/103rd-congress/house-bill/3355/summary/40>.

<sup>41</sup> Congress.gov., “H. Amdt.514 to H.R.4092 - 103rd Congress (1993-1994),” April 19, 1994. <https://www.congress.gov/amendment/103rd-congress/house-amendment/514>.

and Barr resulted in the Crime Bill of 1994 giving an impetus to the spread of the Truth in Sentencing Act among states.

After the Crime Bill was put into action, many states had no choice but to pass a Truth in Sentencing bill, because of the violent crimes committed in those states, while other states already had Truth in Sentencing.<sup>42</sup> Wisconsin was one of many states that implemented a Truth in Sentencing Act after the publication of the Crime Bill. The Wisconsin Truth in Sentencing bill was proposed by, then, state representative Scott Walker who also happened to be an ALEC member. The Wisconsin Truth in Sentencing Act was different from ALEC's model bill, but the result remained the same. In Wisconsin there was a bifurcated sentence which consisted of confinement in prison, which had to be served in secured confinement, and a term of extended supervision, which had to be at least 25 percent of the confinement in prison. Together this would be the total term of imprisonment. Moreover, this bill completely abolished the possibility for parole.<sup>43</sup> Accordingly, this meant that people would spend more time in prison, which is similar to ALEC's model bill.

The Wisconsin bill did follow up on the demands of the government to get funding but had a different way of approaching Truth in Sentencing in comparison to most other states. The legislators of North Carolina proposed a Truth in Sentencing bill in 1993, which became embedded in the Structured Sentencing Act of 1994. In this bill they write that "the prisoner shall be released for post-release supervision on the date equivalent to his maximum prison term less nine months."<sup>44</sup> The maximum prison sentence is defined as the maximum the judge has imposed on the felon, which indicates that there is no room to ask for parole. The North Carolina Truth in Sentencing Act contended that 85 percent of the sentence had to be served

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<sup>42</sup> William Claiborne, "States Wary of Anti-Crime Bill: Legislators Balk at Measure's Costs, Requirements," *The Washington Post*, July 29, 1994, <https://www.proquest.com/historical-newspapers/states-wary-anti-crime-bill/docview/750826412/se-2?accountid=12045>.

<sup>43</sup> Wisconsin Assembly, Assembly Bill 351, LRB-3154/1, 93<sup>rd</sup> Ass., § 86 (1997) <https://docs.legis.wisconsin.gov/1997/related/proposals/ab351>.

<sup>44</sup> North Carolina General Assembly, Structured Sentencing Act, § 15A-1370.3 (1994).

behind bars, which met the government standards that were once proposed by ALEC member Barr.

The government's funding for the construction of prisons had a significant impact on state legislation. At the end of the 1990s almost all states had implemented some sort of Truth in Sentencing. However, not all states met the criteria for this funding. Indiana, Maryland, Nebraska, and Texas implemented a Truth in Sentencing of which at least 50 percent of the punishment had to be served in prison. Wisconsin, Alaska, Arkansas, Colorado, Kentucky, and Massachusetts implemented a variation on the Truth in Sentencing, as shown above with Wisconsin. Furthermore, Idaho, Nevada, and New Hampshire implemented a Truth in Sentencing law that required prisoners to serve 100 percent of their sentence in a prison.<sup>45</sup> The *24 recommendations* by Barr have served as a blueprint for the Truth in Sentencing Act in the federal government, and resulted in the federal government pushing this Act on the states. This lobbying effort by ALEC has been quite successful, as all states implemented a version of Truth in Sentencing, which, in turn, was beneficial for the CCA.

African Americans were, because of racial bias, more likely to be put in prison for drug offenses or violent offenses than their white counterparts. People of color have always had to stand a more difficult trial than white people. Anderson and Alexander recall numerous of Supreme Court cases that allowed racial profiling, tossed out evidence of racial bias, and so on.<sup>46</sup> Within the Truth in Sentencing law there was racial bias as well. A study shows that of the people released in 1996 white people served two months less than African Americans for the same crime. All these factors together ensured a rise in mass incarceration, especially that of African Americans. The prison population of state prisons between 1990 and 1997

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<sup>45</sup> U.S. Department of Justice, *Truth in Sentencing in State Prisons*, by Paula M. Ditton and Doris James Wilson, 170032, Washington D.C., 1999, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/truth-sentencing-state-prisons>, 2.

<sup>46</sup> Anderson, 133; Alexander, 78.

skyrocketed from 689,577 to 1,100,850 because of Truth in Sentencing.<sup>47</sup> ALEC and the Truth in Sentencing law played an important role in the rise of the prison population, at the expense of the African American population.

### **Habitual Violent Offender Incarceration Act**

In 1994 almost all states and the federal government adapted the “Three Strikes and You’re Out” law. Before 1994 there already existed tough on crime laws, but in 1994 the laws became tougher. The reason the get-tough movement became larger was because of some violent crimes that were portrayed in the media, like the murder of Polly Klaas who was abducted from her house and the murder of James Jordan, the father of famous basketball player Michael Jordan.<sup>48</sup> Despite the fact that the overall crime rates became lower, as mentioned by May, fear rose in the United States.<sup>49</sup> The “Three Strikes” law that was implemented had to provide a feeling of safety to the citizens of the United States.

ALEC’s 1995 *Sourcebook of American State Legislation* included a “Three Strikes and You’re Out” model bill, which it named the Habitual Violent Offender Incarceration Act. This Act proposes that habitual violent offenders should be sentenced to a life imprisonment without parole and without release for the third conviction of a violent offense. Violent offenses include robbery, manslaughter, rape, child abuse, kidnapping or any other violent offenses that include deadly weapons.<sup>50</sup> ALEC’s model bill is not complete as it misses adoption and approval information, but it did include this bill in its sourcebook.<sup>51</sup> Moreover, there is enough information in this model bill to put it alongside state and federal law to detect similarities.

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<sup>47</sup> U.S. Department of Justice, *TiS in State Prisons*, 3-10.

<sup>48</sup> Michael G. Turner, Jody L. Stundt, Brandon K. Applegate, Francis T. Cullen, “Three Strikes and You’re Out Legislation: A National Assessment,” *Federal Probation* 59, no.3 (September 1995): 16.

<sup>49</sup> May, 845.

<sup>50</sup> “Habitual Violent Offender Incarceration Act,” *ALEC Sourcebook of American State Legislation*, Washington D.C.: ALEC, 1995.

<sup>51</sup> Ibid.

Similar to the Truth in Sentencing Act, the Habitual Violent Offender Incarceration Act is embedded in the Crime Bill of 1994. Again, the reason for this “coincidence” is former Attorney General William P. Barr. In his *24 Recommendations to Strengthen Criminal Justice* the third recommendation he makes is to “adopt mandatory minimum penalties for gun offenders, armed career criminals, and habitual violent offenders,” in which he argues that states should adopt mandatory minimum sentencing for violent offenders with prior convictions. Furthermore, he argues in his accompanying memo that the habitual offender is the biggest flaw of the American Justice system.<sup>52</sup> Identical to the Truth in Sentencing Act, the Habitual Violent Offender Incarceration Act was brought to Congress via the *24 Recommendations* by Barr, which was then implemented in the Crime Bill of 1994.

The Crime Bill and ALEC’s Habitual Violent Offender Incarceration Act are nearly the same. In the Crime Bill it states that an offender should receive a mandatory life sentence if “the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of— (i) 2 or more serious violent felonies; or (ii) one or more serious violent felonies and one or more serious drug offenses.”<sup>53</sup> As shown earlier in this subsection ALEC lobbied for the same set of rules with its Habitual Violent Offender Incarceration Act. Moreover, besides implementing these new laws the federal government also handed out an incentive grant for the states that implemented these new laws as well, which is, again, identical to what it did with the Truth in Sentencing law. Of the grants provided by the government fifty percent of the total grant would go to states that implemented the Truth in Sentencing law, whereas the other fifty percent of the total grant would go to states that implemented the Habitual Violent Offender Incarceration Act. These grants were made

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<sup>52</sup> U.S. Department of Justice, *24 Recommendations*, 11.

<sup>53</sup> U.S. Congress, Violent Crime Control and Law Enforcement Act of 1994, 103<sup>rd</sup> Congress ch. VII §70001.

in order to build new prisons, correctional facilities, and for more beds in prison.<sup>54</sup> This was beneficial for ALEC members such as the CCA.

With the possibility of a grant, many states were eager to implement a similar law as well. In most states it became known under the “Three Strikes and You’re Out” law. Arkansas was one of the states that implemented a “Three Strikes” law. The bill was brought into the Arkansas congress by two ALEC members Senator Jim Keet and Senator Stanley Russ. Stanley Russ would go on to be Senate Majority leader and to be listed in ALEC’s “1999 ALEC Leaders in the States,” which means he was of great value for ALEC.<sup>55</sup> In their bill they proposed that a violent offender that has been convicted of a violent crime and previously has been convicted on “one (1) or more separate and distinct prior occasions of one (1) or more of the serious felonies involving violence enumerated below shall be sentenced to imprisonment, without eligibility of parole or community punishment transfer, for term of not less than forty (40) years nor more than eighty (80) years, or for life.”<sup>56</sup> The term in prison of a habitual violent offender with a prior conviction is, thus, in line with the Crime Bill as well as with ALEC’s model bill.

There are some other parts of Arkansas’ Habitual Violent Offender bill that overlap with ALEC’s model bill. In ALEC’s model bill a severability clause is added, which is the same as in Arkansas’ bill. In ALEC’s model bill the severability clause states that “if any part of this Act or its application to any person or circumstances is held to be invalid for any reason, then the remaining parts or applications to any other persons or circumstances shall not be affected but shall remain in full force and effect.”<sup>57</sup> The severability clause of Arkansas’ Habitual Violent Offender bill states the following: “if any provisions of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other

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<sup>54</sup> Ibid., ch. 2 §20103.

<sup>55</sup> “Arkansas ALEC Politicians,” SourceWatch, 27 January 2021, [https://www.sourcewatch.org/index.php/Arkansas\\_ALEC\\_Politicians#cite\\_note-1999ALEC-32](https://www.sourcewatch.org/index.php/Arkansas_ALEC_Politicians#cite_note-1999ALEC-32), paragraph 1.4.

<sup>56</sup> Arizona Assembly, Habitual Offenders Act, ACT 1009 OF 1995, 80<sup>th</sup> Ass., Reg. Session (1995).

<sup>57</sup> “Violent Offender,” ALEC.



provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared to be severable.”<sup>58</sup> Although every law, statute, or bill has a severability clause, the resemblance between these two severability clauses is, to say the least, remarkable. This, therefore, demonstrates that ALEC had a major impact and influence on state legislature through senators and representatives.

The Habitual Violent Offender Incarceration Act has impacted the lives of many people in America. However, it was not nearly as effective as legislators thought it would be. In a 1999 study Austin, Clark, Hardyman, and Alan argue that the act was mainly symbolic, as many violent offenders would not repeat a violent felony for a third time. Furthermore, they argue that the punishments were already lengthy for violent offenders. With regard to crime reductions, the law had almost no effect either.<sup>59</sup> The people that were incarcerated under this Act were often people of color with small misdemeanors. An example is Curtis Wilkerson, a black man from California, who bought some items at the mall in 1995. He forgot to pay for a pair of white socks costing \$2,50. In his younger years he had been in prison two times for a robbery, which meant that stealing these socks was his third strike. He was sentenced to a life imprisonment for stealing a pair of ordinary white socks.<sup>60</sup> In the state of California black people were twelve times as likely to be incarcerated under these mandatory minimum laws than white people in the state.<sup>61</sup>

The case of Wilkerson shows that these types of laws affected African Americans that committed small misdemeanors more, because of racism and the image people had of African Americans in the 1990s. May calls this the age-old trope that black men are dangerous and

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<sup>58</sup> AR. ACT 1009 OF 1995.

<sup>59</sup> James Austin, John Clark, Patricia Hardyman, and Henry, D. Alan, “The Impact of ‘Three Strikes and You’re Out,’” *Punishment & Society* 1, no. 2 (1999): 158.

<sup>60</sup> Matt Taibbi, “Cruel and Unusual Punishment: The Shame of Three Strikes Laws,” *Rolling Stone*, March 27, 2013, <https://www.rollingstone.com/politics/politics-news/cruel-and-unusual-punishment-the-shame-of-three-strikes-laws-92042/>.

<sup>61</sup> Ranya Shannon, “3 Ways the 1994 Crime Bill Continues to Hurt Communities of Color,” *Center for American Progress*, May 10, 2019, <https://www.americanprogress.org/issues/race/news/2019/05/10/469642/3-ways-1994-crime-bill-continues-hurt-communities-color/>.

should be incarcerated. Furthermore, May argues that “*Time* magazine made it clear that innocent citizens should fear young black men, ‘the most crime-prone segment of the population,’ whose numbers were increasing. *Time* gave the impression that the nation’s city streets were swarming with young blacks eager to commit ‘interracial crime.’”<sup>62</sup> With the Habitual Offender Incarceration Act ALEC ensured that people would go to prison, and are, therefore, responsible for the high incarceration rate of African Americans.

### **Minimum-Mandatory Sentencing Act**

In addition to a “Three Strikes” law for violent crimes, often there was also a mandatory minimum set for drugs offenses. The “Three Strikes” law for drugs differed per state, but the general consensus was the same; a first-time offender gets the normal time in prison for the crime, a second time offender gets double the time of what is normal for the committed crime, a third time offender is “out,” which means twenty-five years to life.<sup>63</sup>

The 1995 *Sourcebook of American State Legislation* contained such a mandatory minimum bill. This model bill, which is called the Minimum-Mandatory Sentencing Act, is very similar to state legislation in Florida. ALEC’s Minimum-Mandatory Sentencing Act pleads for minimum sentencing for drugs offenses. The punishment for any drugs offense would be based on the amount of drug, the type of drug, and whether it was the first conviction.<sup>64</sup> Furthermore, this Act requires that an estimation is made of the cost of expanding prisons with the enacting of this bill, which provides a link between the CCA and ALEC.

ALEC’s model bill on minimum mandatory sentencing for small drug misdemeanors is comparable with Florida’s 1995 Statutes. The Statutes and model bill are solely compared on

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<sup>62</sup> May, 79.

<sup>63</sup> Dale Parent, *Key Legislative Issues in Criminal Justice: Mandatory Sentencing*, [Washington, D.C.]: U.S. Dept. of Justice, Office of Justice Programs, National Institute of Justice, 1.

<sup>64</sup> “Minimum-Mandatory Sentencing Act,” *ALEC Sourcebook of American State Legislation*, Washington D.C.: ALEC, 1995.

the basis of possession, distribution, delivery, and selling of cannabis. To start with, they both clearly state that the penalties are the same for distributing, possessing, delivering, and selling drugs. Furthermore, in ALEC's model bill it states that "if the quantity for which the person is convicted is less than ... 200 grams of marijuana, etc., a mandatory term of incarceration in a state correctional facility of not less than three days and not more than three years and a fine of up to \$15,000."<sup>65</sup> In Florida the felony was already at an amount of 20 grams or less. In Florida's 1995 Statutes it states the following on minor drug misdemeanors: "If the offense is the possession [or distribution] of not more than 20 grams of cannabis, as defined in this chapter, the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083."<sup>66</sup> In Florida in 1995 a misdemeanor of the first degree was punishable with imprisonment not exceeding one year and a fine can be added of \$1000.<sup>67</sup> The model bill and the Florida statutes of 1995 are quite similar, however, ALEC's model bill is less harsh and the amount of drugs for a conviction is higher.

The model bill also suggests a mandatory minimum for a second, or subsequent, felony regarding drugs, which can also be traced back in the Statutes of Florida in 1995. ALEC's model bill suggest a "mandatory term of incarceration in a state correctional facility of not less than one year and not more than five years and a fine of up to \$50,000."<sup>68</sup> Florida's Statutes are exactly the same as the model bill in respect to the punishment. In Florida in 1995 a second, or subsequent, felony regarding drugs "the person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084."<sup>69</sup> In Florida a felony of the third degree is punished with a prison term not exceeding five years and an additional fine can be added of \$5,000.<sup>70</sup> The similarities between Florida's Statutes and ALEC's model bill show the

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<sup>65</sup> Ibid.

<sup>66</sup> Florida Statutes, Drug Abuse Prevention and Control Act, § 893.13 (1995).

<sup>67</sup> Florida Statutes, Definitions; General Penalties; Registration of Criminals, § 775.082 (1995).

<sup>68</sup> "Mandatory Minimum Sentencing," *ALEC*.

<sup>69</sup> Florida Statutes, Drug Abuse, § 893.13.

<sup>70</sup> Florida Statutes, Definitions, §§ 775.082-083.

connection between ALEC and Florida state legislators. The fines are of a different caliber, but the similarities in prison sentence are there.

The Mandatory Minimum Sentencing Drug Act has had some serious implications on the lives of African Americans. Imposing a life sentence based on a previous criminal record was unfair and a targeted attack towards African Americans. They were already a step behind in relation to the police and the justice system. Moreover, African Americans had been portrayed by the media as felons for years. The media was saturated with images of the black drug criminal, as Alexander argued in *The New Jim Crow*. Therefore, the media, together with political elites, caused a strong racial bias, which is shown in multiple studies.<sup>71</sup> Thus, by proposing this model bill, ALEC was partially responsible for the incarceration of a part of the African American population.

### **The Juvenile Justice System**

In the United States there were already juvenile offender acts, but in ALEC's 1995 *Sourcebook of American State Legislation* they propose more bills to lock up juveniles. One of these acts is ALEC's Habitual Juvenile Offenders Act, which set a minimum mandatory sentencing for juvenile from the age of fourteen. With this Act ALEC played well into the fears of the American public of the young black violent offender.<sup>72</sup> The Habitual Juvenile Offender model bill proposed that a new category would be established within juvenile offenders, the habitual juvenile offender. Teenagers that fall under the term habitual juvenile offender have been sentenced twice before for a violent crime. ALEC's model bill also states that a felony would also include the attempt, conspiracy, or complicity to commit such offenses.<sup>73</sup> This model bill ensured that more people would go to prison. In 1994 ALEC made a report card of

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<sup>71</sup> Alexander, 134.

<sup>72</sup> May, 79.

<sup>73</sup> "Habitual Juvenile Offender Act," *ALEC Sourcebook of American State Legislation*, Washington D.C.: ALEC, 1995.

crime, with a foreword of William P. Barr, an ALEC member, in which it already argued that states should “allow juveniles’ criminal histories to be considered by the court. Permit a juvenile’s criminal history to be admitted and considered in adult court proceedings.”<sup>74</sup> With the Habitual Juvenile Offender Act ALEC put its money where its mouth was.

Illinois was one of many states that enacted the Habitual Juvenile Offender Act in 1999. In the Illinois Code they use almost the exact same language as in ALEC’s model bill. They define a habitual juvenile offender as “any minor having been twice adjudicated a delinquent minor for offenses which, had he been prosecuted as an adult, would have been felonies under the laws of this State, and who is thereafter adjudicated a delinquent minor for a third time shall be adjudged an Habitual Juvenile Offender.”<sup>75</sup> In ALEC’s model bill a juvenile habitual offender is defined as “a juvenile offender who has previously been twice adjudicated a juvenile delinquent for separate delinquent acts, arising out of separate and distinct criminal episodes that constitute felonies.”<sup>76</sup> The similarities between ALEC’s model bill and the Illinois Code in terms of definition of a habitual juvenile offender is, thus, very similar. This demonstrates that ALEC’s model bill definitely reached the state of Illinois as well.

ALEC’s model bill did not only reach the state of Illinois, but it also reached Colorado whose Juvenile Habitual Offender Act in total is an exact copy of ALEC’s model bill. In 1996 the Colorado House proposed a bill that would alter Colorado’s statutes regarding juvenile justice. The bill was sponsored by Representatives Adkin, George, and Reeser, of which Representative George is most interesting. Representative Russel George has been known to have ties with ALEC, which makes the similarity in bills even more interesting. George was the Speaker of the House and was, just like Stanley Russ from Arkansas, on ALEC’s “1999

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<sup>74</sup> Michael Block and Steve Twist, *Report Card on Crime and Punishment*, Washington D.C.: ALEC Foundation, 1994, [https://www.prisonlegalnews.org/media/publications/alec\\_report\\_card\\_on\\_crime\\_1994.pdf](https://www.prisonlegalnews.org/media/publications/alec_report_card_on_crime_1994.pdf), 6.

<sup>75</sup> Illinois Code, Violent and Habitual Offender Provisions, 705 ILCS 405/Art. V ch. 8 § 5-801 (1999).

<sup>76</sup> “Juvenile Offender”, *ALEC*.

ALEC Leaders in the States” list.<sup>77</sup> As with Illinois, the definition of a habitual juvenile offender in Colorado’s bill is almost identical to the definition of a habitual juvenile offender in ALEC’s model bill. In Colorado’s bill it states that a habitual juvenile offender means “a juvenile offender who has previously been twice adjudicated a juvenile delinquent for separate delinquent acts, arising out of separate and distinct criminal episodes, that constitute felonies.”<sup>78</sup> ALEC’s model bill was definitely used as a blueprint for the definition of a habitual juvenile offender.

Moreover, there are other similarities between Colorado’s bill and ALEC’s model bill. In section five of ALEC’s model bill a clause is included that discusses the youthful offender system. It asserts that:

A juvenile may be sentenced to the youthful offender system created pursuant to this section under the circumstances set forth. In order to sentence a person to the youthful offender system, the court shall first impose upon such a person a sentence to the department of corrections. The court shall thereafter suspend such sentence conditioned on completion of a sentence to the youthful offender system, including a period of parole supervision. The court shall impose any such sentence to the youthful offender system for a determinate period of not less than one year not more than five years and a mandatory period of parole supervision for a period of one year.<sup>79</sup>

In Colorado’s bill on habitual juvenile offenders, it states the following on the youthful offender system:

A juvenile may be sentenced to the youthful offender system created pursuant to this section under the circumstances set forth [...] In order to sentence a person to the youthful offender system, the court shall first impose upon such person a sentence to the department of corrections [...] The court shall impose any such sentence to the youthful offender system for a determinate period of not less than two years nor more than six years, with authority granted to the department of corrections to place a youthful offender under a period of community supervision for a period of no less than six months and up to twelve months any time after the date on which the youthful offender has twelve months remaining to complete the determinate sentence.<sup>80</sup>

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<sup>77</sup> “Colorado ALEC Politicians,” SourceWatch, 27 January 2021,

[https://www.sourcewatch.org/index.php?title=Colorado\\_ALEC\\_Politicians](https://www.sourcewatch.org/index.php?title=Colorado_ALEC_Politicians), paragraph 1.4.

<sup>78</sup> Colorado Juvenile Justice System, House Bill 96-1005, 60<sup>th</sup> Ass., 2<sup>nd</sup> Reg. Session (1996).

<sup>79</sup> “Juvenile Offender,” ALEC.

<sup>80</sup> CO. House Bill 96-1005, §20.

ALEC's section on the youthful offender system and that of Colorado's bill are nearly identical. The main difference between these two bills are the sentences. In ALEC's model bill the sentence is not less than one year and not more than five years, whereas in Colorado's bill the sentence is not less than two years and not more than six years. These identical sections prove ALEC's influence on state legislation.

Besides the Habitual Juvenile Offender Act, ALEC had more acts related to the incarceration of juveniles namely the Automatic/Optional Juvenile Waiver Act. These model bills suggested that juveniles had to be tried under the adult criminal justice system and standardize procedures through which a juvenile would be waived into the adult criminal justice system if the prosecutor chooses to "file a complaint or a warrant for a specified offense."<sup>81</sup> The waiving of a juvenile into the adult criminal justice system implies that a juvenile will be given an adult sentence, which often means a longer time in prison. According to the model bill a juvenile should be automatically waived into the adult justice system if a judge contemplates that the juvenile is guilty of a crime that would be a felony in the adult system. If a juvenile is guilty of a violent or serious crime as well as suspicion of conspiracy, attempt, or solicitation, a juvenile should be tried as an adult according to ALEC's model bill.

In the state Michigan a bill was introduced in 1996 which is, again, identical to ALEC's Optional Juvenile Waiver Act. Michigan states in this act that "if a juvenile 14 years of age or older is accused of an act that if committed by an adult would be a felony, the probate judge of the county in which the offense is alleged to have been committed may waive jurisdiction under this section upon motion of the prosecuting attorney. After waiver, the juvenile may be tried in the court having general criminal jurisdiction of the offense."<sup>82</sup> ALEC's model bill proposes

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<sup>81</sup> "Automatic Juvenile Waiver Act," *ALEC Sourcebook of American State Legislation*, Washington D.C.: ALEC, 1995.

<sup>82</sup>Michigan Assembly, Probate Code of 1939, House Bill No. 4490, 88<sup>th</sup> Ass., Reg. Session (1996).

the exact same stating that “if a juvenile 14 years of age or older is accused of an act that if committed by an adult would be a felony, the juvenile division of the {Insert Appropriate State Court} judge of the county in which the offense is alleged to have been committed may waive jurisdiction under this Act upon motion of the prosecuting attorney. After waiver, the juvenile may be tried in the circuit or general criminal court having general jurisdiction of the offense.”<sup>83</sup> It is safe to claim that ALEC influenced the trials of juveniles in the United States by spreading its model bill.

In recent and old studies, it is brought to the light that African American youth are more likely to be arrested for a felony, which means they are tried as adults. In a 1994 study Coramae Richey Mann argues that most of these African American youths were caught for activities like “shoplifting, other assaults, disorderly conduct, drug abuse violation, and motor vehicle theft.” Furthermore, she shows, with statistics, that in public juvenile facilities 60 percent was a minority of which 42 percent were African American.<sup>84</sup> This contends that African American youths were the prime victim of the Optional/Automatic Juvenile Waiver Act and the Habitual Juvenile Offender Act.

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<sup>83</sup> “Optional Juvenile Waiver Act,” *ALEC Sourcebook of Legislation*, Washington D.C.: ALEC, 1995.

<sup>84</sup> Coramae Richey Mann, “A Minority View of Juvenile Justice,” *Washington and Lee Law Review* 51, no. 2 (1994): 466.



## Corrections Corporation of America

In the previous chapter ALEC's model bills were compared with state and federal legislation. This chapter will dive deeper into the connection between the Corrections Corporation of America and ALEC, and how they profited from ALEC's model bills. Furthermore, it will argue that ALEC and the CCA have become wealthier with the rise in prison population. This argument will be supported with two extra Acts of ALEC, the Prison Industries Act and the Private Correctional Facilities Act. Especially the Prison Industries Act will show the multiple ways these corporates have been able to make money of cheap prison labor. At the end of the chapter the Prison Industries Act will be linked to the prison industrial complex, which is a problem the United States still struggles with nowadays. However, to start this chapter, a small history will be given on the privatization of prisons.

### History of Private Prisons

The privatization of prisons has a long history in the United States. After the Civil War there was a lack in labor force for work that used to be done by enslaved people. The language used in the 13<sup>th</sup> Amendment definitely put prisoners at the front as a solution for this lack in labor force. The 13<sup>th</sup> Amendment states that “neither slavery nor involuntary servitude, except as a punishment for crime whereby the party has been duly convicted, shall exist within the United States.” This resulted in a surge in private contractors for prisons.<sup>85</sup> Prisoners either worked for private contractors inside the prison or outside the prison. However, this type of prison labor was prone to corruption. Prisoners that delivered good work were kept longer by lengthening their sentence. Therefore, various acts prohibited the use of this kind of prison labor like the Hawes-Cooper Act in 1929, the Walsh-Healey Act in 1936, and the Sumners-Ashurst

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<sup>85</sup> Richard W Harding, “History of Privatized Corrections,” *Criminology & Public Policy a Journal Devoted to Policy Discussions of Criminology Research Findings: An Official Publication of the American Society of Criminology*, 18 (2019): 245.

Act in 1940.<sup>86</sup> This meant the decline, and eventually the end, of private contractors for a long time.

Nonetheless, in the late 1970s the rise of private corporations started again. Private corporations were focused on juvenile correctional facilities. It was the perfect time to start, because of the “falling economic barriers to investing, a resurgence in the economy following the recession of 1980-1981, and the increasing privatization of public goods and services as a part of the Reagan Administration’s fiscal policies.”<sup>87</sup> Besides the investment possibilities, the rise of the War on Drugs and other tough on crime laws left the public prisons overcrowded. Therefore, it did not take long before the interest turned to adult prisons. At the end of the 1980s, private corporations received their first contracts for adult prisons in various states.<sup>88</sup> Thus, when taking a glance at the past of privatization in prisons, it can be stated that corruption and money have been big motivators in the prison industry for a long time.

The idea of the Corrections Corporation of America, nowadays called CoreCivic, began to take form in 1983 when Thomas W. Beasley and Dr. Robert Crants, the founders of CCA, met at a Republican presidential fundraiser. At this fundraiser they shared their ideas with an executive who said it would be a good idea “to solve the prison problem and make a lot of money at the same time.”<sup>89</sup> Beasley and Crants created the Corrections Corporation of America with which they were determined to build or manage prisons for alle levels of government. Furthermore, one of their key features was that they would manage prisons per diem, which meant they asked a daily fee for inmates. Naturally, the biggest profit was yielded when they ran the prisons at its maximum capacity.

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<sup>86</sup> Ibid., 246.

<sup>87</sup> David Guimond, “Prisons of industry: The recent history of American private prisons, 1978-1985,” (PhD. diss., University of Ottawa: 1998), 21.

<sup>88</sup> Richard Harding, “Private Prisons,” *Crime and Justice: A Review of Research* 28 (2001): 267.

<sup>89</sup> Donna Selman and Paul Leighton, *Punishment for Sale Private Prisons, Big Business and the Incarceration Bing*. (Lanham, MD: Rowman & Littlefield, 2010), 56.

Shortly after creating the CCA, Beasley and Crants contacted Terrel Don Hutto, president of the American Correctional Association (ACA), an organization that was known to lobby for the private corrections industry. Although there was a clear conflict of interest, Don Hutto started to push for privatization at the American Correctional Association (ACA), while simultaneously benefitting from it for the years to come.<sup>90</sup> CCA received its first contract in 1983 from the federal government to build an Immigration and Naturalization Services facility in Texas. In a short amount of time it grew immensely; in 1984 it was awarded the management of its first prison in Tennessee, in 1986 it opened its first juvenile facility, in 1989 it opened its first women's prison, in 1990 it opened its first medium security prison, and in 1992 it opened its first maximum security facility.<sup>91</sup>

## **ALEC & CCA**

Because of the secrecy around ALEC it is not exactly possible to pinpoint how long CCA has been a member, but multiple sources argue that it has been a member for decades. The connection between ALEC and CCA is very simple, because there is one thing a privatized prison needs to thrive: prisoners. While it is not possible to exactly pinpoint how long CCA has been an ALEC member, there are sources that date back to the early 1990s that show CCA's investment. Although ALEC has repeatedly denied that CCA was ever a member, there is clear evidence in its own "1992 Annual Report of the American Legislative Exchange Council" that CCA had a private sector membership.<sup>92</sup> Furthermore, during the 21<sup>st</sup> annual meeting of ALEC in 1994 Robert Britton from the CCA was part of a lecture named Campaign School on Crime, in which he elaborated on crime control. These lectures were made to provide legislators with

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<sup>90</sup> Ibid.

<sup>91</sup> Britney Anne Majure, "Corrections Corporation of America Irresponsibility and Investor Behavior," (Master's Thesis, University of New Hampshire: 2016), 20.

<sup>92</sup> American Legislative Exchange Council, *Winning the Debate in the States: 1992 Annual Report* (Washington D.C.: ALEC, 1993), 31.

a strong “agenda and plan to advance crime control [in] fall and during the coming legislative session.”<sup>93</sup> Both these annual reports, thus, validate the fact that CCA has been involved with ALEC since 1992.

The CCA had to pay a certain amount of money to become a member of ALEC, ranging from \$5,000 to \$25,000. In contrast to the big amounts of money the corporates donate, legislators that become an ALEC member only have to pay a mere \$500 per year. The money ALEC receives from the corporations is used for annual meetings, so legislators and corporations can exchange ideas. Once more, because of the secrecy around ALEC neither ALEC nor CCA has ever admitted the exact amount of money CCA donates to ALEC every year. In addition, CCA pays another \$3,000 to be part of ALEC’s Criminal Justice Task Force. The Criminal Justice Task Force, which has been co-chaired by a CCA official on multiple occasions, keeps itself busy with writing model bills on crime and punishment.<sup>94</sup> Consequently, ALEC receives money from CCA and becomes wealthier, while CCA gets to have influence on the creation of model bills in their favor, which, in turn, enriches them as well. Moreover, CCA also sponsored legislators affiliated with ALEC to increase the chances of their model bills being implemented in state legislation. One of these legislators is Rep. Cory Gardner (R-CO) who ran for U.S. senator in 2020 to represent Colorado. He received \$20,000 from the CCA for his campaign. Notably, Gardner is an ALEC member.<sup>95</sup> This strengthens the notion of how eager CCA was to implement ALEC’s model bills in the states.

### **Model Bill Profits**

The model bills that were profitable for CCA all have key phrases that were of significant influence on the growth of private prisons. The model bills that have been discussed

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<sup>93</sup> American Legislative Exchange Council, *ALEC’s 21st Annual Meeting Tampa, Florida* (Tampa: ALEC, 1994), 10.

<sup>94</sup> Selman, 100.

<sup>95</sup> “Corecivic Fka Corrections Corp Of America / CCA: Candidates,” FollowTheMoney.org, accessed May 27, 2021, <https://www.followthemoney.org/entity-details?eid=695>; “Colorado ALEC Politicians,” paragraph 1.4.

in the second chapter all have this minor detail to it, especially the Truth in Sentencing Act and the Habitual Violent Offender Incarceration Act. Grants were given to states that implemented Truth in Sentencing, and the Habitual Violent Offender Incarceration Act. The Crime Bill states that “grants [can be given] to individual States and to States organized as multi-State compacts to construct, develop, expand, modify, operate, or improve correctional facilities, including boot camp facilities and other alternative correctional facilities that can free conventional prison space for the confinement of violent offenders, to ensure that prison cell space is available for the confinement of violent offenders and to implement truth in sentencing laws for sentencing violent offenders.”<sup>96</sup> This made it possible for states to improve their prisons and for CCA a chance to be the one that makes these improvements.

An example can be found in Florida, where the Truth in Sentencing Act had been implemented in 1995, which made them eligible for the funding.<sup>97</sup> In that same year CCA assumed management of Florida’s Citrus County Detention Center. Similarly, Arizona had already implemented their Truth in Sentencing law on January 1, 1993, which made them immediately eligible for the federal grant. At the end of 1994 CCA opened a new detention facility in Arizona, the Central Arizona Detention Center. In CCA’s history of prison building or assuming management, it is noticeable that since the Crime Bill in 1994 they opened 14 new facilities until 2000 and assumed management over another 6 facilities.<sup>98</sup>

However, CCA does not solely receive money from assuming management or opening new facilities. There are many states that do not have a CCA prison, but do need extra room to host their inmates. In a 2001 analysis, the Wisconsin Department of Corrections found that the 990 inmates imprisoned in the 22 months after the law was implemented amounted to 18,384 additional months in prison, which would cost taxpayers around 41 million. Because of the

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<sup>96</sup> U.S. Congress, Violent Crime Control and Law Enforcement Act of 1994, 103<sup>rd</sup> Congress ch. II §20101.

<sup>97</sup> U.S. Department of Justice, *Truth in Sentencing in State Prisons*, 2.

<sup>98</sup> “The CCA Story: Our Company History,” Corrections Corporation of America, accessed May 26, 2021, <http://staging.cca.com/our-history>.

Truth in Sentencing law the prisons in Wisconsin were full around 2001, thus they started housing prisoners in CCA prisons in other states which cost them around 50 million a year.<sup>99</sup> Therefore, CCA definitely benefitted immensely from the Truth in Sentencing and “Three Strikes” laws and the accompanying grants granted by the federal government.

In addition, CCA’s stock price went through the roof in 1995, because of the rapid growth in prison building, managing, and the selling of empty beds. There are not many financial documents of CCA available, but the history of stock prices is traceable, which also shows that CCA benefitted immensely from the new surge in tough on crime laws. As the *New York Times* reported on 3 April 1995 “many of the biggest gainers [that] quarter fueled investors’ enthusiasm by reporting strong profit comparisons for the quarter.” According to the newspaper article, CCA was one of these companies that did extremely well. Their stock doubled from \$16.13 to \$30.63, because investors saw opportunities as CCA increased their quarterly earnings by 71 percent.<sup>100</sup>

By June 1996, the CCA was listed as the fourth largest holding in Pilgrim Baxter and Associates’ (PBHG) flagship fund. PBHG buys shares of companies whose earnings grow twice the average rates, which makes the investment less risky.<sup>101</sup> CCA was thus seen as a great investment opportunity that was doing extremely well financially. CCA’s stock price rose quickly; in July 1997 the stock price was \$103.33, and in December 1997 they reached their peak with a stock price of \$148.75. At the beginning of 1997 a slow decline set in which lasted until December 2000, where the stock price started to climb again.<sup>102</sup> The stock market is a

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<sup>99</sup> John Biewen, “Corporate-Sponsored Crime Laws,” American Radioworks, April 2002, <https://americanradioworks.publicradio.org/features/corrections/laws5.html>, paragraph 6.

<sup>100</sup> Reed Abelson, “Winners Outnumbered the Losers by 2 to 1 in This Year’s First Quarter,” *New York Times*, April 3, 1995, <https://www-proquest-com.ezproxy.leidenuniv.nl/historical-newspapers/stocks-winners-outnumbered-losers-2-1-this-years/docview/109404737/se-2?accountid=12045>.

<sup>101</sup> Reed Abelson, “A Fund Family’s Credo: Growth, Growth, Growth,” *New York Times*, June 23, 1996, <https://www-proquest-com.ezproxy.leidenuniv.nl/historical-newspapers/fund-familys-credo-growth/docview/109637420/se-2?accountid=12045>.

<sup>102</sup> NSYE (June 1997-April 2021), *CoreCivic Inc. (CXW)*, [Stock Chart], retrieved from <https://finance.yahoo.com/quote/CXW/chart>.

good representation of CCA's financial status, and, simultaneously, shows the impact laws such as Truth in Sentencing and "Three Strikes" had on CCA.

### **Prison Labor & The Prison Industrial Complex**

Besides tough on crime laws, ALEC and CCA had more ways to generate money through prisoners. The exploitation of prison labor was legally forbidden in America until 1995, because it could cause unfair competition. Prison labor was used, but the prisons were obliged to pay the state minimum wage to the prisoners, which meant there was not much left for institutional profit. The Prison Industries Act, one of ALEC's model bills, changed this way of prison labor.<sup>103</sup> The Prison Industries Act was first drafted by Texas State Representative, and ALEC member, Ray Allen in 1993. After it passed in Texas, it was included in ALEC's sourcebook of state legislation. Not long after, many states had some version of the Prison Industries Act.<sup>104</sup>

The Prison Industries Act provided for the "employment of inmate labor in state correctional institutions and in the private manufacturing of certain products under specific conditions, and includes limitations on how prison industries may impact non-prison industries within the state."<sup>105</sup> The "specific conditions" are written down in the Prison Industry Enhancement Certification Program, which stated that prisoners should be paid the state's minimum wage, and that corrections facilities may take a share, not greater than 80 percent, of that wage for "room and board, taxes, family support, and crime victim compensation/assistance."<sup>106</sup> The Prison Industries Act sought to direct the money of these deductions towards prison enhancement by creating a new account, the Private Sector Prison

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<sup>103</sup> Cooper, 389.

<sup>104</sup> Mike Elk and Bob Sloan, "The Hidden History of ALEC and Prison Labor," *The Nation*, August 11, 2011, <https://www.thenation.com/article/archive/hidden-history-alec-and-prison-labor/>, paragraph 5.

<sup>105</sup> "Prison Industries Act," *ALEC Sourcebook of American State Legislation*, Washington D.C.: ALEC, 1995.

<sup>106</sup> U.S. Department of Justice, *Prison Industry Enhancement Certification Program* by Nancy E. Gist, FS000046, Washington D.C., 1995, <https://www.ojp.gov/pdffiles/pie.pdf>, 2.

Industries Expansion Account. This account was created “to construct more facilities and increase the number of participants [...] Money in the account may be appropriated only to construct work facilities, recruit corporations to participate as private sector industries programs, and pay costs of the authority and department in implementing this subchapter, including the cost to the department in reimbursing authority members and the employer liaison for expenses.”<sup>107</sup> Before this Act prisoners would cost less for taxpayers, because the prisoners would pay their own housing. Now, all the money would go to the expansion of prisons, which was extremely beneficial for CCA. Besides CCA, ALEC also benefitted from this Act, because many private companies related to ALEC were now able to get cheap labor.

In addition to the Prison Industries Act, ALEC crafted the Private Correctional Facilities Act, which allowed governments to contract private prisons. This model bill was also very beneficial for CCA, because if states enacted this bill, it was allowed to build more prisons, which in turn meant more profit. The bill states that a “state or a local government may contract with private entities for the construction, lease (as lesser or lessee), acquisition, improvement, operation, maintenance, purchase, or management of facilities and services as provided in this Act, only with prior approval from the legislature, with the governor acting as the chief executive, as to the site, number of beds, and classifications of inmates or prisoners to be housed in the facility.”<sup>108</sup> This model bill helped CCA to get a better grip on prisons in states, while simultaneously becoming wealthier. One of many states that enacted a version of the Private Correctional Facilities Act is Texas.<sup>109</sup>

As already established before, African Americans had, and still have, the highest incarceration rate, which means the CCA receives money for the cheap labor of, mostly African Americans. This exploitation of prison labor has been introduced by many scholars and activists

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<sup>107</sup> “Prison Industries,” *ALEC*.

<sup>108</sup> “Private Correctional Facilities Act,” *ALEC Sourcebook of American State Legislation*, Washington D.C.: ALEC, 1995.

<sup>109</sup> Elk, paragraph 8.



as the “prison industrial complex,” which, nowadays, still is a problem in the United States, because of ALEC’s model bills. The prison industries complex “insists on understandings of the punishment process that take into account economic and political structures and ideologies.” Furthermore, the prison industrial complex steers to the notion that the racialization of prison populations is not an incident.<sup>110</sup>

It can be argued that African Americans are enslaved again through a system of racism and the exploitation of prison labor done by corporations like the CCA. This is linked to Alexander’s idea of the new Jim Crow as well. She argues that the historic parallels between Jim Crow and mass incarceration can be found in their similar political origins. Both were systems that came to exist, because of white elites trying to exploit poor and working-class African Americans.<sup>111</sup> This is strongly linked to CCA, which benefited of prison labor of, mainly, African Americans. It is safe to state that CCA and ALEC have played a very important role in the prison industrial complex. Especially model bills like the Prison Industries Act and the Private Correctional Facilities Act contributed to this idea of the prison industrial complex, and the notion of modern-day slavery in prisons.

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<sup>110</sup> Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2001), 85.

<sup>111</sup> Alexander, 237.

## Conclusion

This thesis has researched the role of ALEC in the increasing mass incarceration of black citizens between 1990 and 2000 and how it and its members, like the CCA, profited from mass incarceration. The answer to this question lies in a very easily drawn circle, which can also be traced back in this thesis. The circle, in short, start with money being donated to ALEC, then model bills are drafted, model bills are pushed by ALEC legislators, model bills become legislation, the incarceration rate increases, more prisons are needed, and corporations like the CCA become wealthier, acknowledge the influence of ALEC, and, again, donate money to ALEC.

Thus, the CCA, and other corporations affiliated with ALEC donate money to ALEC. As mentioned before, to be a private corporate member of ALEC a corporation had to pay a yearly fee of \$5,000 up to \$25,000. Besides this yearly fee, private corporate members had to pay additional fees of approximately \$3,000 to be a part of a task force. This money is used by ALEC to organize annual meetings in which legislators and corporations can exchange ideas. Furthermore, legislators can go to lectures given by corporations. Legislators affiliated with ALEC only had to pay \$500 per year. The CCA gave a lecture about crime control in 1992 as to influence legislators to implement more tough on crime laws.

The drafting of the model bills is done in task forces, which often include corporations and legislators. Between 1990 and 2000 the ALEC task force drafted model bills that would result in mass incarceration. The model bills that heavily influenced the increase in incarceration included the Truth in Sentencing Act, the Habitual Violent Offender Incarceration Act, the Minimum-Mandatory Sentencing Act, the Habitual Juvenile Offender Act, and the Automatic Juvenile Waiver Act. The Truth in Sentencing Act required an offender to at least serve 85 percent of his or her punishment. This model bill has not only been copied effortlessly on a state, but also on a federal level. The same applied to the Habitual Violent Offender

Incarceration Act, also known as the “Three Strikes and You’re Out” law, which would lock up an offender for life if it was the third strike. The Minimum-Mandatory Sentencing Act is also based on a three-strike system, but then for drug offenses. Both acts on juvenile sentencing ascertained a stream of juveniles would be sentenced as adults.

The third part of the circle would be to push these model bills to become legislation, which was done by the legislators affiliated with ALEC. As is shown in this thesis, all these model bills were implemented in different states across America. The Truth in Sentencing Act was implemented in all states and on a federal level, mainly because, in its 1994 Crime Bill, the government issued a grant to the states that implemented this act. The government also issued a similar grant for the Habitual Violent Offender Incarceration Act. This act was implemented in, among others, Arkansas, by two ALEC members, and California. Furthermore, the Minimum-Mandatory Sentencing Act, for drug offenses, was only implemented on a state level. However, minor drug offenders were often tried under the “Three Strikes and You’re Out” law. Both the juvenile acts have been implemented in the states of Illinois and Colorado, which are exact copies of both model bills. It’s not a coincidence that these are exact copies as in both states the bills had been pushed by ALEC affiliated legislators.

These model bills that have been changed into laws have had serious implications on the mass incarceration in the United States. Especially African Americans were the victim of these laws. From 1975 until 2009 the number of incarcerated people in the United States increased nearly fivefold from 100 per 100.000 to 497 per 100.000 residents. The expansion of prisoners has been unequal in terms of ethnicity: in 2009, 1 percent of the white male population were in prison compared to 7 percent of the black male population. Furthermore, less than 5 percent of white men born in the 1990s are likely to serve a prison sentence compared to 29 percent of black men born in the same period. African Americans were more likely to be arrested because of racial bias. If Americans had to visualize a violent offender, it would be

someone that is black. Moreover, even within the laws there was a case of racial bias. For example, in the Truth in Sentencing law where people that were white served two months less than African Americans for the same crime in 1996. It is safe to argue that ALEC's model bills caused an impetus in incarceration of, mainly, African Americans between 1990 and 2000.

The result of mass incarceration translates into the high demand of new prison as prisons became overcrowded. This is where the CCA jumps back in again. Another model bill, also drafted by ALEC task forces, ensured that the CCA could be contracted by governments to build or manage prisons. This model bill was called the Private Correctional Facilities Act, which was enacted in Texas and other states. CCA made money of the managing, and building of prisons in the 1990s, which can be traced back to their stock price from 1995 until 1998. In between the 1994 Crime Bill and the year 2000, CCA was able to open 14 new facilities across the United States and assumed management over another 6 facilities. Furthermore, they also made money by hiring beds to states. The prisons of Wisconsin were overcrowded, thus they decided to house their prisoners at a CCA prison in another state, which cost them 50 million dollars a year.

Besides the Private Correctional Facilities Act, ALEC also drafted model bills like the Prison Industries Act, which made it possible for companies to make use of prisoners for the manufacturing of goods. In this same act it stated that private prisons could deduct money from the wage of prisoners for the improvement of their prisons. This way of prison labor used to be forbidden until 1995, because it was prone to corruption. From which is known, this act has been enacted in Texas. CCA profited immensely from this act, because it could deduct money from the wages of prisoners to invest in improvements and new prison infrastructures. This course of events is also known as the prison industrial complex, which is often linked to race as well. African Americans are more easily arrested, which makes them the cheap laborers that are exploited by corporations like CCA.

Coming full circle, the CCA understands the benefits of being a private corporate member of ALEC and keeps on donating money, which will start the cycle again but with different laws as the CCA is still a member of ALEC. It is clear that ALEC has had a major role in the lawmaking around the tough on crime laws, and, therefore, had a major role in the increasing mass incarceration. All the model bills discussed have been implemented on either a federal level, a state level, or both. Simultaneously, ALEC benefited from these laws, because companies like the CCA would keep on paying their yearly fee of \$25,000. Like ALEC, CCA also benefitted immensely of these laws implemented on federal and state level. The statement that ALEC and the CCA have become wealthier at the expense of African Americans needs to be a bit nuanced, because African Americans were not the only group to be incarcerated. However, as is shown, African Americans have been, and still are, the biggest demographic group in the United States to be incarcerated under these laws. Furthermore, they are much more likely to be arrested than their white counterparts, which also played a big factor in this.

Nowadays, ALEC is still involved in these kinds of practices, not only regarding the justice system, but also in many other fields like the environment. This research has shown that they should be held responsible for the harm they did regarding the justice system in America between 1990 and 2000. Luckily, the Black Lives Matter movement and other activists have already exposed a lot of ALEC practices since 2010, which, hopefully, will stop ALEC in the coming future.

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